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By: **Senator Frosh**

Introduced and read first time: February 6, 2004

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - State's Right of Appeal - Discretion to Release**  
3 **Defendant**

4 FOR the purpose of authorizing a court to release a defendant under certain terms or  
5 conditions pending the prosecution and determination of certain appeals by the  
6 State in certain criminal cases; repealing a requirement to release a defendant  
7 on personal recognizance bail under certain circumstances; authorizing a court  
8 to order a defendant remanded to custody pending the outcome of certain  
9 appeals; requiring certain terms or conditions of release to be subject to certain  
10 requirements; making technical corrections; and generally relating to the  
11 release of a defendant pending the determination of certain appeals by the State  
12 in certain criminal cases.

13 BY repealing and reenacting, with amendments,  
14 Article - Courts and Judicial Proceedings  
15 Section 12-302(c)  
16 Annotated Code of Maryland  
17 (2002 Replacement Volume and 2003 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Courts and Judicial Proceedings**

21 12-302.

22 (c) In a criminal case, the State may appeal as provided in this subsection.

23 (1) The State may appeal from a final judgment granting a motion to  
24 dismiss or quashing or dismissing any indictment, information, presentment, or  
25 inquisition.

26 (2) The State may appeal from a final judgment if the State alleges that  
27 the trial judge:

1 (i) Failed to impose the sentence specifically mandated by the  
2 Code; or

3 (ii) Imposed or modified a sentence in violation of the Maryland  
4 Rules.

5 (3) (i) In a case involving a crime of violence as defined in § 14-101 of  
6 the Criminal Law Article, and in cases under §§ 5-602 through 5-609 and §§ 5-612  
7 through 5-614 of the Criminal Law Article, the State may appeal from a decision of a  
8 trial court that excludes evidence offered by the State or requires the return of  
9 property alleged to have been seized in violation of the Constitution of the United  
10 States, the Constitution of Maryland, or the Maryland Declaration of Rights.

11 (ii) The appeal shall be made before jeopardy attaches to the  
12 defendant. However, in all cases the appeal shall be taken no more than 15 days after  
13 the decision has been rendered and shall be diligently prosecuted.

14 (iii) Before taking the appeal, the State shall certify to the court that  
15 the appeal is not taken for purposes of delay and that the evidence excluded or the  
16 property required to be returned is substantial proof of a material fact in the  
17 proceeding. The appeal shall be heard and the decision rendered within 120 days of  
18 the time that the record on appeal is filed in the appellate court. Otherwise, the  
19 decision of the trial court shall be final.

20 (iv) If the State appeals on the basis of this paragraph, and if on  
21 final appeal the decision of the trial court is affirmed, the charges against the  
22 defendant shall be dismissed in the case from which the appeal was taken. In that  
23 case, the State may not prosecute the defendant on those specific charges or on any  
24 other related charges arising out of the same incident.

25 (v) 1. Pending the prosecution and determination of an appeal  
26 taken under THIS PARAGRAPH OR paragraph (1) [or (3)] of this subsection, the  
27 [defendant shall be released on personal recognizance bail. If the defendant fails to  
28 appear as required by the terms of the recognizance bail, the trial court shall subject  
29 the defendant to the penalties provided in § 5-211 of the Criminal Procedure Article.]  
30 COURT MAY RELEASE THE DEFENDANT ON ANY TERMS OR CONDITIONS THAT THE  
31 COURT CONSIDERS APPROPRIATE, OR MAY ORDER THE DEFENDANT REMANDED TO  
32 CUSTODY PENDING THE OUTCOME OF THE APPEAL.

33 2. ANY TERMS OR CONDITIONS OF RELEASE UNDER  
34 SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH SHALL BE SUBJECT TO TITLE 5 OF  
35 THE CRIMINAL PROCEDURE ARTICLE.

36 (vi) If the State loses the appeal, the jurisdiction shall pay all the  
37 costs related to the appeal, including reasonable attorney fees incurred by the  
38 defendant as a result of the appeal.

39 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
40 October 1, 2004.